**IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA**

**SECOND APPEAL NO. 46 OF 2001**

1. Smt. Vasanti Babli Borkar
   Widow of late Babli Borkar,
   Major in age, Housewife

2. Shri Govind Babli Borkar
   Son of late Babli Borkar
   Major in age, married, service,
   Both above resident of
   House No. 97/B
   Duge Nuvem, Salcete-Goa. .... Appellants.

*Versus*

Shri Kishore K. Shah
Major in age, businessman,
Having his establishment at 6,
Tripoli Building,
Pajifond, Margao-Goa. .... Respondent

Shri Sudin Usgaonkar with Shri A. Borkar, Advocates for the Appellants.

Shri P.P. Singh with Shri T. George John, Advocate for the Respondent.

CORAM : **P.V. KAKADE, J.**

DATE : **17th NOVEMBER, 2006**

**ORAL JUDGMENT :**

Heard the learned Counsel for both the parties. Perused the

record.

2. The unsuccessful defendants have preferred this appeal against the judgment and order passed by the Additional District Judge, South Goa, Margao, dismissing the appeal and confirming the judgment and order passed by the trial Court, decreeing the suit with direction to the appellants/defendants to pay jointly and severally the amount of Rs. 48,168/- with interest at the rate of 9% p.a.

3. The plaintiff filed a suit for recovery of loan amount of Rs. 48,168/- alongwith interest and costs. The case of the plaintiff was that the defendants wanted to buy a property at Nuvem and were in urgent need of money. They had requested the plaintiff to advance to them a loan of Rs. 73,168/-. The defendants promised to repay the loan amount within a short period of time. It was the case of the plaintiff that he responded to the claim of the defendants and, accordingly, gave them the said loan. The defendants as and by way of security towards the payment of the loan gave two cheques to the plaintiff for Rs. 48,168/- and Rs. 25,000/-. By a letter dated 3/10/1992, the defendant no.2 had requested the plaintiff not to present the cheques for payment before 31/10/1992, as his loan formalities

with L.I.C. had not been complete. However, the plaintiff presented the said cheque for payment, which was dishonoured for insufficient funds. The plaintiff alleged that the defendants had paid sum of Rs. 25,000/-. The defendants, however, failed to pay the amount of Rs. 48,168/-. Hence, notice was issued on 3/09/1993. However, defendant no.1 denied of having taken any loan and stated that she is not liable to make any payment to the plaintiff. Hence, the suit.

4. Defendants, inter alia, denied the claim made by the plaintiff on submission that the plaintiff was in need of money and as such he had requested the defendants to arrange for loan. Defendants contended that the defendant no.1 had agreed to give a loan of Rs. 73,168/- by arranging some money out of her savings and by arranging some money from the defendant no.2, who was expecting G.P.F. loan. Accordingly, the defendant no.1 issued two cheques, one for Rs. 48,168/- issued in the name of the plaintiff and the other cheque was for Rs. 25,000/- issued in the name of the wife of the plaintiff. It was further contended that they had instructed the plaintiff not to present the said cheques unless so instructed. Since the G.P.F. loan was delayed, the defendant no.1 could not arrange the funds and as such could not give loan to the plaintiff. The defendant no.1 stated

that there was no transaction of any loan, however, the cheques which were issued by her remained with the plaintiff and his wife, and that the plaintiff had filed a false suit and as such suit was sought to be dismissed.

5. The learned trial Judge after hearing both the parties and on the basis of available evidence on record, came to the conclusion that the plaintiff had proved that he had advanced a loan of Rs. 73,168/- to the defendants and the defendants by way of security had issued two cheques to the plaintiff of Rs. 48,168/- and of Rs. 25,000/-. Therefore, it was further held that the plaintiff was entitled to the amount of Rs. 48,168/- with interest thereon at the rate of 9% p.a. The trial Court further proceeded to hold that defendants failed to prove that the suit was barred by limitation and that defendants had issued those cheques by way of loan to the plaintiff and as such the suit came to be dismissed. The appeal was preferred to the District Court. The learned Additional District Judge, after hearing both the parties concurred with the findings recorded by the trial Court and dismissed the appeal

Hence, the present appeal.

6. The admission Court while admitting the matter framed two substantial questions of law. One being to the effect that whereby the Courts below committed illegality in taking a pedantic view holding that evidence beyond pleadings was not considered, and thus looked at the form and not at the substance of the pleadings, overlooking that there was material corroboration of the pleadings in evidence. Second issue which was raised, was to the effect that the cross-examination of the respondent as well as document Exhibit 15 were misread by the Courts below.

7. Now, so far as the first substantial question is concerned, it must be noted that it is as vague as anything and, therefore, cannot be considered to be a substantial question of law. It appears that the appellants want to submit that the view taken by the Courts below that evidence could be looked beyond pleadings was not correct. So far as the second issue raised is concerned, it is also purely the question of fact and requires no consideration for it to be said as a substantial question of law.

8. At the outset, it may be noted that the crux of the matter is rightly summarised by the learned lower appellate Court while raising the point of determination to the effect that whether the defendants had proved

that the cheque at exhibit 14 was issued by way of a loan to the plaintiff and answer was recorded in the negative.

9. It must be mentioned that defendants have not disputed that defendant no. 1 had issued cheque dated 25/09/1992 for a sum of Rs. 48,168/- in favour of the plaintiff. It is also not disputed that said cheque was presented in the bank on 15/10/1992 and the same was dishonoured. In terms of Section 114-C of the Evidence Act and Section 118 of Negotiable Instrument Act, the presumption is that the said cheque was issued for consideration. Under these circumstances, the burden was on the defendants to rebut the said presumption, in which task the defendants appear to have totally failed.

10. The learned Counsel for the appellants, thereafter, sought to raise issue which was not involved in the adjudication of both the Courts below i.e. application of the Money Lenders Act. However, in my considered view, the findings on record have not disclosed any money lending transaction but it is only the solitary transaction which is reflected on record. Therefore, the question of invoking of the Money Lenders Act would not come into effect. Under the circumstances, I do not see any

reason to disturb the concurrent findings recorded by the Courts below. In the result, the appeal stands dismissed with no order as to costs.

**P.V. KAKADE, J.**

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